



October 24, 2001

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P. O. Box 850137
Mesquite, Texas 75185-0137

OR2001-4853

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153820.

The Mesquite Police Department (the "department") received a request for information relating to a specified accident investigation. You have provided the requestor with some of the responsive information, including the peace officer accident report. You claim that portions of the submitted information are excepted under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(b), a governmental body must request a decision and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. The department received the request on August 6, 2001 and, therefore, had until August 20, 2001 to request a decision. Because the request for a decision was faxed to this office on August 21, you failed to request a decision within the ten business day period mandated by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records

¹We note that you initially claimed section 552.119 for photographs of peace officers. You inform this office, however, that the requestor does not wish to obtain any photographs at this time. Therefore, this ruling will not address any responsive photographs.

Decision No. 319 (1982). You argue that portions of the submitted information are excepted under sections 552.101 and 552.130 of the Government Code. Sections 552.101 and 552.130 of the Government Code provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, we will address your claimed exceptions.

You assert that criminal history record information ("CHRI") is excepted under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. CHRI generated by the National Crime Information Center ("NCIC") and the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 -.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. After reviewing the submitted information that you claim is CHRI, we agree that most of the information consists of CHRI that must be withheld under section 552.101 of the Government Code. However, some of the information pertains to motor vehicle registration and, therefore, is not CHRI that may be withheld under section 552.101 of the Government Code. We have marked the CHRI that must be withheld under section 552.101 of the Government Code.

You also claim that portions of the submitted information are excepted under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold most of the driver's license numbers, license plate numbers, VIN numbers and motor vehicle registration information under section 552.130. We note, however, that section 552.130 is designed to protect the privacy interest of the individual. This office has determined that privacy rights lapse upon the death of the subject. Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, the department may not withhold the section 552.130 information of the deceased individual that you have marked. The department, however, must withhold the highlighted driver's license numbers and the additional information that we have marked under section 552.130 of the Government Code.

In conclusion, the department must withhold the marked CHRI under section 552.101 of the Government Code. Further, the department must withhold the highlighted driver's license numbers and the information that we have marked under section 552.130 of the Government Code. You must release the remaining submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 153820

Enc: Submitted documents

c: Mr. Neil C. Newson
Neil C. Newson & Associates
9465 Wilshire Boulevard, Suite 330
Beverly Hills, California 90212-2659
(w/o enclosures)